

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

JIM R BLEKKENK,

Debtor.

Case No. **06-60026-7**

O R D E R

At Butte in said District this 26th day of January, 2006.

On January 26, 2006, Debtor filed a chapter 7 case, without paying the filing fee. On January 26, 2006, Debtor filed an application for waiver of the chapter 7 filing fee for individuals who cannot pay the filing fee in full or in installments. Debtor states in the application that his family size is two (2), although he states that he and his wife are separated on Schedule I and discloses no other dependents. He states that his combined monthly income from line 16 of Schedule I is \$2,300. Debtor states that his monthly expenses from line 18 of Schedule J is \$5,064. Debtor states in the Statement of Monthly Net Income on Schedule J that his monthly net income is \$-2764.83. Debtor provides no explanation or information in question 18 of the application for waiver as to why he is unable to pay the filing fee in installments (the page containing question 18 is not attached).

On October 17, 2005, numerous amendments to the bankruptcy code became effective through the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). One of the amendments, 28 U.S.C. § 1930(f) (1), provides:

Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual

has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. § 9902(2)]) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the “filing fee” means the filing fee required by subsection (a), or any other fee prescribed by the Judicial Conference under subsection (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

The first factor requires the Court to consider if Debtor’s income is less than 150% of the poverty line. The table below assists in the Courts’s analysis.

POVERTY GUIDELINES AND CALCULATION OF 150% OF POVERTY GUIDELINE

48 Contiguous States

Persons in Family Unit	Poverty Guideline*	150% of Poverty Guideline**
1	\$9,570	\$14,355
2	12,830	19,245
3	16,090	24,135
4	19,350	29,025
5	22,610	33,915
6	25,870	38,805
7	29,130	43,695
8	32,390	48,585

* Source: <http://aspe.hhs.gov/poverty> . Federal Register, Vol. 70, No. 33, February 18, 2005, pp.8373-75. These values will change in February 2006 and annually thereafter.

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In applying the above analysis to Debtor’s application for waiver, the Court concludes that Debtor does not qualify for a fee waiver for the following reasons. The first factor of 28 U.S.C. § 1930(f) requires the Court to determine if the family combined income is less than 150 percent of the official poverty line for Debtor’s family size. Debtor states he has a family size of 2. However given the fact that Debtor and his spouse are separated, Debtor’s family size may

only be 1 and not 2. Whether Debtor's family size is 1 or 2, such fact will not alter the Court's decision as Debtor reveals monthly income of \$2,300. If that number is multiplied by 12, his annual income is \$27,600. The poverty line for a family of 2 under the poverty guidelines is \$12,830 and for a family of 1 is \$9,570. The annual income of \$27,600 exceeds the 150 percent cap of the poverty guideline set for a family of 1 at \$14,350, and for a family of 2 at \$19,245. The Court, given that Debtor's annual income is greater than 150% of the poverty line for either a family of 1 or 2, does not need to consider the second factor, which requires the Court to determine if Debtor is unable to pay the fee in installments. Debtor stated no reason in his application why he could not pay the fee in installments. The Court concludes, based on Debtor stating no reason why he cannot pay the fee in installments, that Debtor is able to pay the fee in installments.

The two factor test contained in 28 U.S.C. § 1930(f) for granting a fee waiver application is conjunctive and not disjunctive. Debtor does not satisfy both factors. For cause,

IT IS ORDERED that Debtor's application for waiver of the chapter 7 filing fee for individuals who cannot pay the filing fee in full or in installments is denied; and that Debtor must either pay the filing fee of \$274 in full on or before February 2, 2006, or file an application to pay the filing fee in installments on or before February 2, 2006.

BY THE COURT

A handwritten signature in cursive script, reading "Ralph B. Kirscher", is written over a horizontal line.

HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana